

**PART 822—APPLICATION OF LABOR LAWS TO GOVERNMENT  
ACQUISITIONS**

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**SUBPART 822.3 - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

**822.304 Variations, tolerances, and exemptions.**

When a contract is entered into for nursing home care, the clause prescribed by FAR 22.305 will be modified to reflect the variation contained in 29 CFR 5.15(d)(3) as set forth in 852.222-70.

**SUBPART 822.4 - LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION**

**:::822.470 Department of Labor regulations.**

(a) To comply with the requirements of section 1.4 of title 29, Code of Federal Regulations, at the beginning of each fiscal year, each field station will submit a list of approved maintenance and repair construction projects for which contracts are proposed to be awarded during the ensuing fiscal year, and which are also subject to the Davis-Bacon Act, to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, DC 20210. The Chief Facilities Management Officer, Office of Facilities Management, will submit a list of all other construction projects subject to the Davis-Bacon Act, for which contracts are proposed to be awarded during the ensuing fiscal year to the Department of Labor. The format for these submissions must include the estimated number of contracts, the anticipated types of construction and the locations of construction. During the year, all reporting offices should notify the Department of Labor of any significant changes in their proposed construction programs as outlined at the beginning of the fiscal year.

(b) Interagency report control number 1671-DOL-AN has been assigned to these reports.:::

**:::822.473 Administration and enforcement policy.**

(a) The preconstruction conference or letter will explain the necessity of physically including labor standards provisions in all subcontracts (29 CFR 5.5(a)(6)).

(1) Incorporation by reference does not constitute compliance with this section.

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(2) Failure of the prime contractor or a subcontractor to include the labor standards provisions in his/her subcontracts may be a serious violation of the contract requirements which would warrant the imposition of sanctions pursuant to 29 CFR 5.5.

(b) VA Form 10-1327, Construction Contract Preconstruction Conference Checklist, is available from VA Forms and Publications Depot for use in conducting station preconstruction conferences.

(c) The preconstruction conference or letter will also be used to discuss the information required to be shown on payrolls submitted by the contractor. The model Payroll Form WH-347 and Statement of Compliance Form WH-348, developed by the Department of Labor, will be used as the basis of the discussion. Copies of these forms may be furnished the contractor for his/her information. Sample Forms WH-347, WH-348 and WH-347 Inst., Instruction for Completing Payroll Form WH-347, may be obtained from the VA Forms and Publications Depot. Then attention of the contractor will be invited to the instructions contained in Form WH-347.:::

**:::822.474 Payrolls and statements.**

(a) The examination required by 29 CFR 5.6(a)(3) will be made by the resident engineer or the engineer officer as appropriate. This official shall assure that each pay period is accounted for and that each weekly payroll contains the information required.

(b) The resident engineer or engineer officer shall, with each payroll submission, certify that the rates of pay comply with the contract wage determination and the labor standards provisions.

(c) In the event payrolls are not received within the time specified, the resident engineer or engineer officer shall so inform the contracting officer. The contracting officer shall take immediate action to secure the payroll submission. :::

**:::822.475 Investigations.**

(a) *Regular investigations.* The contracting officer will authorize such regular investigations as he/she may consider necessary to assure contract compliance. These investigations will be conducted by the contracting officer or his/her designee.

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(b) Investigating officials will be guided by the instructions set forth in appendix A of this subpart, with particular reference to section 3(c), to determine whether violations may or may not be willful.

(c) VA Form 10-1327a, Construction Contract Site Checklist, is available from the VA Forms and Publications Depot for use in conducting regular investigations and employee interviews to assure contractors' compliance with labor standards in station-executed construction contracts.:::

**:::822.476 Suspensions and deductions of contract payments.**

(a) The disposition of amount deducted from final payment vouchers for wage underpayments is prescribed in chapter 7, title 4, General Accounting Office Manual. The SF 1093, Schedule of Withholdings Under the Davis-Bacon Act, should be annotated to the effect that the comprehensive administrative report on which the deductions were based is being submitted to either the Deputy Assistant Secretary for Acquisition and Materiel Management or the Chief Facilities Management Officer, Office of Facilities Management, for forwarding to the Department of Labor.

(b) The disposition of amounts deducted as liquidated damages under the Contract Work Hours and Safety Standards Act is prescribed in VA manual MP-4, part V.:::

**:::822.477 Reports.**

(a) *Semiannual reports.*

(1) The report (IRCN 1482-DOL-SA) required by 29 CFR 5.7(b) will be prepared in the manner prescribed in appendix B of this subpart on VA Form 90-2145, Semiannual Enforcement Report. The report will be prepared by:

(i) The Chief, A&MMS, at a field station; and

(ii) Chief Facilities Management Officer, Office of Facilities Management, and

(iii) Director, Building and Supply Service, Central Office; and

(iv) Executive Director and Chief Operating Officer, VA National Acquisition Center.

(2) The report will be submitted in an original only in sufficient time to reach the address shown on the form not later than the 10th

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workday following the close of the report period. A negative report is required.

(3) The Deputy Assistant Secretary for Acquisition and Materiel Management will consolidate these reports into an agency report, which will be submitted to the Department of Labor not later than April 30 and October 31 of each year.

*(b) Reports of violations--regular investigations.*

Each non willful violation involving the Contract Work Hours and Safety Standards Act, which has been corrected, but which requires the assessment of liquidated damages, will be reported to the Deputy Assistant Secretary for Acquisition and Materiel Management. Based on the facts of the case, the contracting officer shall submit a recommendation with his/her report whether the contractor should be relieved of this liability.

*(c) Reports of violations--special investigations.*

(1) Reports of investigations conducted by the Department of Labor are submitted by their Washington office to the Deputy Assistant Secretary for Acquisition and Materiel Management. After review by the Office of Acquisition and Materiel Management (and except as provided in paragraph (c)(2) of this section) the report will be furnished to the contracting officer concerned for necessary action together with such advice and guidance as may be indicated.

(2) If the investigation report indicates possible violations of a criminal nature, the Deputy Assistant Secretary for Acquisition and Materiel Management will forward the report to the Inspector General for investigation and referral to the Department of Justice. In the event the case is submitted to the Department of Justice, the contracting officer and the Department of Labor will be so advised by the Deputy Assistant Secretary for Acquisition and Materiel Management. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. attorney concerned, through the Inspector General.

(3) The contracting officer will review the report of investigation and complete the actions indicated therein. He/she will submit a report of the actions taken to Deputy Assistant Secretary for

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Acquisition and Materiel Management, with recommendations regarding the assessment of liquidated damages and/or the imposition of sanctions. The Deputy Assistant Secretary for Acquisition and Materiel Management will, after reviewing this report, submit a report to the Department of Labor of the actions taken, together with recommendations for any suggested actions to be taken by that agency.

(d) *Reports control exemption.* The reports referred to in paragraphs (b) and (c) of this section are exempt from reports control.:::

**822.478 Contract terminations.**

(a) Prior to terminating any contract because of violations of the labor standards provisions of the contract, contracting officers, other than those in the Office of Facilities Management will, through the Deputy Assistant Secretary for Acquisition and Materiel Management, present the facts in detail to the General Counsel for review. The contracting officer will be advised by the Deputy Assistant Secretary for Acquisition and Materiel Management, as to the recommended action to be taken.

(b) Prior to terminating a contract managed by the Office of Facilities Management for labor standards violation, the contracting officer will, through the Chief Facilities Management Officer, Office of Facilities Management, present the facts in detail to the General Counsel for review. The contracting officer will be advised by the Chief Facilities Management Officer, Office of Facilities Management as to the recommended action.

(c) If the contract is to be terminated, the Deputy Assistant Secretary for Acquisition and Materiel Management or the Chief Facilities Management Officer, Office of Facilities Management, will submit the reports required by 29 CFR 5.7(d).

**:::822.479 Review of recommendations for an appropriate adjustment in liquidated damages under the Contract Work Hours and Safety Standards Act.**

(a) When liquidated damages have been assessed by the contracting officer under the labor standards provisions of the contract and the contractor protests either that the sum determined is incorrect or that the violations were inadvertent, notwithstanding the exercise of due care, he/she will be advised of his/her right to appeal this action to the Secretary under the provision of section 104(c) of the Contract Work Hours and Safety Standards Act. He/she will be informed that the appeal must be taken under this section and not under the Disputes clause of the contract. If the

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protest is made orally to the contracting officer, the contractor will be advised to submit his/her appeal, in writing, within 60 days after receipt of the contracting officers decision. Should the protest be in writing, however, the letter of protest will be treated as an appeal. In each instance, the written protest or appeal will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management for further action. The contractor and contracting officer will be advised as to the final disposition of the appeal and the contract file documented accordingly.

(b) The authority of the Secretary to make the determinations and to take the actions provided in 29 CFR 5.8 is delegated, without power of redelegation, to the Deputy Assistant Secretary for Acquisition and Materiel Management. The Deputy Assistant Secretary for Acquisition and Materiel Management is also delegated, without power of redelegation, the authority conferred upon the Secretary by section 104(c), the Contract Work Hours and Safety Standards Act, to review administrative determinations of liquidated damages and to issue final orders affirming such determinations.:::

**SUBPART 822.4 - LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION**

**APPENDIX A**

**:::INVESTIGATION AND ENFORCEMENT MANUAL**

**(For Government Use Only)**

**Investigation and enforcement manual with respect to labor standards provisions applicable to contracts covering federally financed and assisted construction, pursuant to, Part 5 of Subtitle A - Office of the Secretary of Labor (Title 29, Code of Federal Regulations).**

**INTRODUCTION**

**Part I - Investigation by Project Inspector.**

**Sec. 1. Relationship with other duties.**

The investigation for compliance by the project inspectors or other persons similarly responsible for the enforcement of the contract provisions is continuous for the duration of the job. Their activities are fundamental to the success of this program, but the assumption of additional responsibilities on their part should be consistent with their presently



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assigned duties as well as their experience and knowledge of construction in all its phases. Accordingly, the effective use of this staff will require that the project inspector become fully familiar with each contractor's responsibilities in the employment and payment of persons engaged on the project as well as his/her responsibilities for meeting other specifications, for example, materials used, adherence to building code regulations, and time of completion of work.

**Sec. 2. Aid to project inspector by the agency.**

(a) To aid the project inspector in developing familiarity with the labor standards provisions of the contract and the importance of current compliance by the contractor, the agency should:

- (1) Specifically bring to the attention of the project inspector the labor standards provisions which are required to be inserted in the agency's contracts pursuant to section 5.5 of title 29, Code of Federal Regulations, and assure that the project director understands the meaning and purpose of the provisions. Many violations can be prevented if the project inspector will in turn assure himself/herself that the contractor understands these provisions in his/her contract from the very beginning of the project.
- (2) Make it clear to the project inspector that the enforcement of such labor standards provisions is in the same category as other requirements of the contract specifications, and that failure to comply with such labor standards provisions requires adjustments by contractors and subcontractors and, in addition, may result in penalties being imposed. He/she should understand that maintaining compliance during the course of construction is clearly advantageous in that it will save time, trouble, and expense to both the contractor and the Government, as well as subserve the interest of the public in the enforcement of these provisions of law.
- (3) Arrange to furnish a copy of the standard contract labor stipulations and this manual to the project inspector at the beginning of his/her assignment, and at such other times as are necessary.

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**Sec 3. Extent of investigation by project inspector.**

(a) As the project inspector develops this awareness of the labor standards provisions of the contracts and gains experience in their application, merely through observation and by asking questions in conjunction with carrying out his/her other inspection duties, he/she should be able to determine readily whether or not it is necessary to request the agency for a full scale investigation as outlined in part II of this manual. Ordinarily, it will not be necessary for him/her to make a detailed audit of the payrolls or to conduct extensive interviews. General familiarity with the payroll and time sheets, progress reports, contractors' apprenticeship agreements and similar data, together with oral inquiries of employees and other questions, would be sufficient to develop information as to whether there is compliance with the labor standards provisions. The project inspector will find it helpful to become acquainted with the techniques outlined in part II of this manual and may find it expedient to adapt some of them to his/her investigation.

(b) Substantial sums money can be saved if violations are found and corrected in the early stages of the construction. For example, in one case a project inspector noted in scanning a payroll for a large project that more apprentices than journeymen were listed for a particular classification. By asking a few questions, the project inspector found that the employees classified as apprentices were performing the duties of journeymen and, further, that they were not employed under the bona fide apprenticeship program. As a result, the contractor was enabled to rearrange his/her methods whereby he/she utilized the proper number of apprentices in an approved program and was not later faced with a large back pay bill and possible ineligibility for further contracts. The Government was saved the expense of searching out widely scattered former employees in order to reconstruct the evidence of what had taken place during the performance of the contract. In another case, a project inspector, by questioning a bulldozer operator on a clearing job, discovered that the operator and other employees in his/her group were being paid the rate for truckdrivers. In each of these cases, the job was just getting under way and the early correction of the violations resulted in savings of time and money.

(c) The project inspector should bring the need of investigative assistance or a completed investigation to the attention of his/her supervisors whenever he/she has reason to believe that violations, which are of a serious nature or not readily adjustable, may be present, for example where:

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- (1) Complaints alleging violations of such a nature are received which the project inspector feels may have some validity. Some of the sources of such complaints will be employees, competing employers, their representatives or other interested persons. (Complaints shall be treated confidentially.)
- (2) There are habitual and persistent violations of other requirements of the contract so as to indicate a general carelessness on the part of the contractor as respects to his/her contractual and statutory responsibilities.
- (3) Contractors delay in furnishing the required payrolls, certifications, or affidavits, if satisfactory explanation is not furnished or other suspicious circumstances exist.
- (4) Discrepancies, other than routine errors, are discovered. The discovery of falsifications in the time and payroll records, or reasonable cause to believe such a situation exists, calls for especially prompt and vigorous action.

**Sec. 4. Preliminary checking of payrolls by the project inspector.**

The weekly payroll should be utilized for spot checking in the course of investigation assignments whether such investigations are made on a selective basis or otherwise. The project inspector should assume responsibility for timely and proper submission of the required payroll data. He/she should, at least, scan this information for completeness and discrepancies, such as disproportionate employment in the various classifications, in light of his/her knowledge of the status of construction on the project. He/she could, of course, compare the information on the payrolls with the daily time records on a spot check basis and at intervals sufficient to satisfy himself/herself that the records truly reflect the existing conditions. The payrolls, certifications and affidavits, together with the project inspectors report of his/her findings and recommendations, should be transmitted promptly to the field or regional office for filing, or for further checking and use by the special investigator as may be necessary. If potential violations of a serious nature or that are not readily adjustable are indicated, the project inspectors report should contain sufficient data regarding the nature and extent of such potential violations to enable the agency to determine whether a full scale investigation by the special investigator is warranted.

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**Sec. 5. Posters.**

The project inspector should see that the wage determination decision and any other required labor standards provisions are posted by the contractor at the site of the work in a prominent and accessible place where it can be easily read by the workers. Enforcement will be materially aided if, in addition to the posting of the Secretary of Labor's wage determination decisions, a poster is conspicuously displayed which informs employees of their rights and that written complaints will be received by the project inspector or the agency. This would also serve to put the subcontractors on notice of the labor standards provisions. It is suggested that on projects covering large areas, these posters be placed at more than one location.

**SUBPART 822.4 - LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION**

**APPENDIX B**

**SEMIANNUAL ENFORCEMENT REPORT**

**INSTRUCTIONS**

Line 1 Enter the beginning and ending dates of the period covered by the semiannual report.

Line 2A Enter the number of prime contracts subject to the Davis-Bacon Act, or any of the related statutes listed in 29 CFR part 5 (FAR subpart 22.4), awarded during the period covered by this report.

Line 2B Enter the number of nonconstruction contracts, subject to the Contract Work Hours and Safety Standards Act (FAR subpart 22.3, e.g., window washing, elevator maintenance, television repair, etc.), awarded during the period covered by this report.

Line 3A Enter the total dollar value of the contracts listed on line 2A.

Line 3B Enter the total dollar value of the contracts listed on line 2B.

Line 4 Enter the total number of contractors and subcontractors against whom complaints were received by VA.

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Line 5 Enter the total number of full-scale investigations completed at your station by VA. A full-scale investigation is a complete and detailed investigation into the administration of labor standards provisions of the contract; do not include routine payroll checks. However, a full-scale investigation may be one limited to some portion of a contractor's/subcontractor's operation, such as a single paving crew.

Line 6 Enter the number of contractors and subcontractors found in violation as a result of the investigations reported on line 5 above. Do not count a contractor or subcontractor more than once in a single investigation because he/she has violated more than one act, or because more than one contract is included in the investigation.

Line 7 Enter the total amount of wage restitution which your station found due employees of the contractors/subcontractors reported on line 6 above, showing under (A) the amount found due because of violations of the Davis-Bacon and Related Acts and under (B) the amount of wage restitution found due because of violations of the Contract Work Hours and Safety Standards Act.

Line 8 Enter the number of employees to whom the wage restitution reported on line 7 above is due. The figure is the unduplicated count: that is, an employee due wage restitution as a result of an investigation shall be counted only once, regardless of the fact that he/she may be due wage restitution under the Contract Work Hours and Safety Standards Act.

Line 9 Enter the total amount of liquidated damages assessed as a result of violations of the Contract Work Hours and Safety Standards Act, regardless of whether the investigations are made by the VA or the Department of Labor.

Remarks Enter any explanation or comment considered necessary to a proper understanding of the report. A separate sheet may be attached, if necessary.:::

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